

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SPECIALTY NATIONAL INSURANCE CO.,

No. 1:07-cv-07507 (SHS)

Plaintiff,

v.

**ELECTRONICALLY
FILED**

ENGLISH BROTHERS FUNERAL HOME,

Defendant.

**ENGLISH BROS. FUNERAL HOME'S LOCAL RULE 56.1
COUNTER-STATEMENT OF MATERIAL FACTS**

Pursuant to Local Rule 56.1, defendant Frank Restivo Funeral Home, Inc. d/b/a English Bros. Funeral Home (named in the captioned as English Brothers Funeral Home) (“English Bros.”) submits the following Counter-Statement of Material Facts in opposition to the motion for summary judgment by plaintiff Specialty National Insurance Company (“Specialty National”) and in support of English Bros.’ cross-motion for summary judgment.

1. No dispute.

2. No dispute.

3. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National’s opinion of the merits of such claims and allegations.

4. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

5. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

6. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

7. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

8. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

9. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

10. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

11. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

12. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

13. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

14. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

15. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

16. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

17. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

18. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine

its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

19. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

20. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

21. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

22. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

23. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying

complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

24. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

25. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

26. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

27. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

28. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

29. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

30. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

31. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

32. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

33. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

34. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

35. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

36. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

37. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

38. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

39. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

40. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

41. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

42. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine

its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

43. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

44. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

45. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

46. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

47. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying

complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

48. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

49. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

50. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

51. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

52. English Bros. does not dispute that the referred-to underlying action was commenced, and otherwise refers to the complaint in that action.

53. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

54. English Bros. disputes the completeness of this statement, as well as its characterization of the allegations made in the underlying complaints. The underlying complaints speak for themselves, and Specialty National is legally obligated to determine its coverage position based on all of the claims and allegations stated in the underlying complaints, without regard to Specialty National's opinion of the merits of such claims and allegations.

55. No dispute.

56. English Bros. disputes the completeness of this statement, as well as its characterization of the relevant and material policy language. The policies at issue speak for themselves.

57. [NUMBERED "55" IN SPECIALTY NATIONAL'S STATEMENT] English Bros. disputes the completeness of this statement, as well as its characterization of the relevant and material policy language. The policies at issue speak for themselves.

58. [NUMBERED "56" IN SPECIALTY NATIONAL'S SATEMENT]

English Bros. disputes the completeness of this statement, as well as its characterization of the relevant and material policy language. The policies at issue speak for themselves.

59. [NUMBERED "57" IN SPECIALTY NATIONAL'S SATEMENT]

English Bros. disputes the completeness of this statement, as well as its characterization of the relevant and material policy language. The policies at issue speak for themselves.

60. [NUMBERED "58" IN SPECIALTY NATIONAL'S SATEMENT]

English Bros. disputes the completeness of this statement, as well as its characterization of the relevant and material policy language. The policies at issue speak for themselves.

Dated: June 6, 2008

KENNEY SHELTON LIPTAK NOWAK LLP

By: /s/

Timothy E. Delahunt, Esq. (TD-2791)

510 Rand Building
14 Lafayette Square
Buffalo, New York 14203
Tel.: (716) 853-3801

Attorneys for defendant English Bros. Funeral Home